

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Bernard National Loan Investors, Ltd.,

Plaintiff,

-against-

Traditions Management, LLC, AEY, LLC, and  
Michael Aiken,

Defendants.  
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X

08 Civ. 3573(DLC)

DECLARATION OF C.  
WILLIAM PHILLIPS

C. WILLIAM PHILLIPS declares as follows pursuant to 28 U.S.C. § 1746:

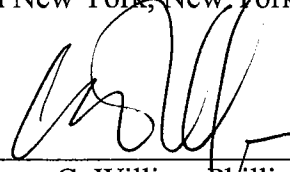
1. I am an attorney admitted to practice before this Court and a member of Covington and Burling LLP (“Covington”), counsel to Defendants in this action.

2. I make this declaration in order to place before the Court certain materials in support of Defendants’ motion to dismiss the Amended Complaint.

2. Attached as Exhibit A is a true and correct copy of Exhibit E to the Loan Agreement and Pledge and Security Agreement (“LPS Agreement”). As explained in Defendants’ Memorandum of Law, the copy of the LPS Agreement annexed as Exhibit B to the Amended Complaint is missing the slipsheet that precedes Exhibit E to the LPS Agreement.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 29, 2008 in New York, New York.



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C. William Phillips

## EXHIBIT A

**EXHIBIT E**

**Initial Budget**

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**TRADITIONS MANAGEMENT, LLC**

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**SUBJECT:** 2007 CONSOLIDATED P&L

**DATE:** 12/14/2006

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Attached is the consolidated budget for 2007 for Traditions Management, LLC. This budget will be amended and updated by January 1, 2007, by which time the company believes it will be able to more accurately reflect the upcoming fiscal year. A variety of issues will impact the final budget including, but not limited to, the following:

1. The attached budget does not include:
  - a. The \$1.0 million in aggregate annual fees payable to Entheos, LLC Gemini I, LLC and Hideaway Investments, LLC per the terms of their Service Agreement(s) (which is subject to cashflow use rules), and
  - b. Revenue from Projects Under Negotiation. A list of those potential projects is attached. The amended and updated budget for 2007 will be adjusted as appropriate for these projects.
2. As noted on Schedule IV to the Loan Agreement and Pledge and Security Agreement, the contracts for Hill County Harbor and Spring Valley Ranch/High Grange are "fluid". The amended and updated budget for 2007 will be adjusted once the various issues relating to these contracts are resolved.
3. By year end, the company will have a clearer understanding of total revenues for 2006 than it does at this time. The current year is unusual versus prior years in that a substantial amount of revenue and earnings were scheduled to occur in the final weeks of 2006. We now believe a substantial amount of budgeted sales will likely close during the first part of 2007 impacting the results of 2006 and the final budget for 2007. Specifically, at Kukui'ula, we anticipate 2006 closings of \$30 million, with the remainder of the budgeted 2006 closings (\$70 million) occurring in early 2007. Additionally, we believe that the budgeted sales for The Tower Residences at The Ritz-Carlton, Dallas will occur in 2007, again impacting the budgets for both years.

# Traditions Management, LLC Consolidated P&L

|  | 2007P        |
|--|--------------|
| <b>Revenues</b>                        |              |
| Gross Fee Revenue                      |              |
| Fees                                   | \$29,660,510 |
| Bonus                                  | 3,246,626    |
| Other                                  | 0            |
| Total Revenues                         | \$32,907,135 |
| Commissions Paid                       | \$14,000,157 |
| Net Fee Revenue                        | \$18,906,979 |
| Reimbursements                         | \$3,166,070  |
| Net Revenue                            | \$22,073,049 |
| <b>Expenses</b>                        |              |
| G&A                                    |              |
| Bank Charges                           | \$2,688      |
| Brokerage Fees                         | 174,000      |
| Company Functions                      | 70,924       |
| F&E: Computer/Database Expense         | 101,250      |
| F&E: Furniture/Equipment               | 85,625       |
| Consulting Fees                        | 120,125      |
| Contract Labor                         | 0            |
| Contributions                          | 6,065        |
| Dues/Subscriptions                     | 4,011        |
| Flower Arrangements                    | 9,990        |
| Gifts                                  | 150,536      |
| Insurance - Allowances                 | 0            |
| Insurance - Health                     | 168,293      |
| Insurance - Key Man                    | 95,000       |
| Insurance - Professional Liability/E&O | 49,647       |
| Insurance - Property & Casualty        | 17,910       |
| Insurance - Worker's Compensation      | 80,989       |
| Licenses/Permits                       | 27,164       |
| Maintenance/Repairs                    | 2,673        |
| Office Supplies                        | 138,679      |
| Parking                                | 19,410       |
| Petty Cash                             | 0            |
| Postage/Delivery                       | 67,937       |
| Printing/Reproduction                  | 8,521        |
| Professional Fees - Accounting         | 50,000       |
| Professional Fees - Legal              | 169,494      |
| Professional Fees - Other              | 250,000      |
| Relocation Expense                     | 10,000       |
| Rents                                  | 207,734      |
| Sales/Marketing/Website                | 30,620       |
| Taxes - Property                       | 275          |
| Training/Recruiting                    | 297          |
| T/M/E: Airfare                         | 313,900      |
| T/M/E: Automobile                      | 25,521       |
| T/M/E: Meals & Entertainment           | 101,646      |
| T/M/E: TM Expenses                     | 44,374       |
| T/M/E: Travel                          | 176,586      |
| Utilities                              | 142,981      |
| Misc                                   | 0            |
| Capitalized Expenses                   | (23,000)     |
| Total G&A                              | \$2,901,862  |

Traditions Management, LLC  
**Consolidated P&L**

|                                  | <u>2007P</u>        |
|----------------------------------|---------------------|
| Payroll                          |                     |
| Salaries/Taxes                   | \$1,756,758         |
| Broker Commissions               | 992,833             |
| Sales Bonuses                    | 332,042             |
| Draws                            | 360,000             |
| Payroll Taxes - Reimbursable     | 77,886              |
| Payroll Taxes - Non-reimbursable | 373,251             |
| Total Payroll                    | <u>\$3,892,771</u>  |
| Business Development             | \$250,000           |
| Total Expenses                   | <u>\$7,044,633</u>  |
| Total EBITDA                     | <u>\$15,028,416</u> |

## Traditions Management, LLC

## Financial Summary by Project

| <u>Net Real Estate Product Sales</u>      |  | <u>2007P</u>         |
|---|--|----------------------|
| Projects Under Contract                   |  |                      |
| Capella Residences - Las Vegas            |  | \$0                  |
| Escondido                                 |  | 34,555,712           |
| Highgrange                                |  | 0                    |
| Hill Country Harbor                       |  | 50,000,000           |
| Kukui'ula                                 |  | 200,000,000          |
| Makena Bay Club                           |  | 397,058,824          |
| Ocean Club Residences & Marina            |  | 9,000,000            |
| Residences at the Ritz-Carlton - Dallas   |  | 0                    |
| Tower Residences at Ritz-Carlton - Dallas |  | 92,220,000           |
| Silverleaf                                |  | 79,999,888           |
| Total Current Projects                    |  | <u>\$862,834,424</u> |

|  |                      |
|--|----------------------|
| <u>Total Net Real Estate Product Sales</u> | <u>\$862,834,424</u> |
|--|----------------------|

| <u>Gross Fee Revenue</u>                  |  |                     |
|---|--|---------------------|
| Projects Under Contract                   |  |                     |
| Capella Residences - Las Vegas            |  | \$0                 |
| Escondido                                 |  | 3,801,128           |
| Highgrange                                |  | 0                   |
| Hill Country Harbor                       |  | 7,054,000           |
| Kukui'ula                                 |  | 4,032,938           |
| Makena Bay Club                           |  | 7,444,853           |
| Ocean Club Residences & Marina            |  | 2,903,643           |
| Residences at the Ritz-Carlton - Dallas   |  | 3,510,902           |
| Tower Residences at Ritz-Carlton - Dallas |  | 1,959,675           |
| Silverleaf                                |  | 2,199,997           |
| Total Current Projects                    |  | <u>\$32,907,135</u> |

|                                |                     |
|--------------------------------|---------------------|
| <u>Total Gross Fee Revenue</u> | <u>\$32,907,135</u> |
|--------------------------------|---------------------|

| <u>Commissions</u>                        |  |                     |
|---|--|---------------------|
| Projects Under Contract                   |  |                     |
| Capella Residences - Las Vegas            |  | \$0                 |
| Escondido                                 |  | 1,624,118           |
| Highgrange                                |  | 0                   |
| Hill Country Harbor                       |  | 3,041,000           |
| Kukui'ula                                 |  | 2,234,813           |
| Makena Bay Club                           |  | 3,573,529           |
| Ocean Club Residences & Marina            |  | 419,628             |
| Residences at the Ritz-Carlton - Dallas   |  | 1,839,044           |
| Tower Residences at Ritz-Carlton - Dallas |  | 1,268,025           |
| Silverleaf                                |  | 0                   |
| Total Current Projects                    |  | <u>\$14,000,157</u> |

|                          |                     |
|--------------------------|---------------------|
| <u>Total Commissions</u> | <u>\$14,000,157</u> |
|--------------------------|---------------------|

| <u>Net Fee Revenue</u>         |  |           |
|--------------------------------|--|-----------|
| Projects Under Contract        |  |           |
| Capella Residences - Las Vegas |  | \$0       |
| Escondido                      |  | 2,177,010 |
| Highgrange                     |  | 0         |



## Traditions Management, LLC

## Financial Summary by Project

|  |                     |
|--|---------------------|
|  | <b>2007P</b>        |
| Hill Country Harbor                                | 4,013,000           |
| Kukui'ula  | 1,798,125           |
| Makena Bay Club                                    | 3,871,324           |
| Ocean Club Residences & Marina                     | 2,484,016           |
| Residences at the Ritz-Carlton - Dallas            | 1,671,858           |
| Tower Residences at Ritz-Carlton - Dallas          | 691,650             |
| Silverleaf   | 2,199,997           |
| <b>Total Current Projects</b>                      | <b>\$18,906,979</b> |
| <b>Total Net Fee Revenue</b>                       | <b>\$18,906,979</b> |
| <b>Reimbursements</b>                              |                     |
| Projects Under Contract                            |                     |
| Capella Residences - Las Vegas                     | \$271,418           |
| Escondido  | 176,243             |
| Highgrange   | 588,379             |
| Hill Country Harbor                                | 230,151             |
| Kukui'ula  | 629,793             |
| Makena Bay Club                                    | 714,461             |
| Ocean Club Residences & Marina                     | 39,146              |
| Residences at the Ritz-Carlton - Dallas            | 0                   |
| Tower Residences at Ritz-Carlton - Dallas          | 384,947             |
| Silverleaf   | 131,532             |
| <b>Total Current Projects</b>                      | <b>\$3,166,070</b>  |
| <b>Total Reimbursements</b>                        | <b>\$3,166,070</b>  |
| <b>Net Revenue (Net Fee Rev. plus Reimb. Exp.)</b> |                     |
| Projects Under Contract                            |                     |
| Capella Residences - Las Vegas                     | \$271,418           |
| Escondido  | 2,353,253           |
| Highgrange   | 588,379             |
| Hill Country Harbor                                | 4,243,151           |
| Kukui'ula  | 2,427,918           |
| Makena Bay Club                                    | 4,585,784           |
| Ocean Club Residences & Marina                     | 2,523,161           |
| Residences at the Ritz-Carlton - Dallas            | 1,671,858           |
| Tower Residences at Ritz-Carlton - Dallas          | 1,076,597           |
| Silverleaf   | 2,331,529           |
| <b>Total Current Projects</b>                      | <b>\$22,073,049</b> |
| <b>Total Net Revenue</b>                           | <b>\$22,073,049</b> |
| <b>Expenses</b>                                    |                     |
| Projects Under Contract                            |                     |
| Capella Residences - Las Vegas                     | \$287,435           |
| Escondido  | 267,331             |
| Highgrange   | 633,735             |
| Hill Country Harbor                                | 1,309,522           |
| Kukui'ula  | 970,326             |
| Makena Bay Club                                    | 803,300             |
| Ocean Club Residences & Marina                     | 47,176              |
| Residences at the Ritz-Carlton - Dallas            | 0                   |
| Tower Residences at Ritz-Carlton - Dallas          | 434,285             |

## Traditions Management, LLC

## Financial Summary by Project

|   |                     |
|---|---------------------|
|   | 2007P               |
| Silverleaf                                | 160,317             |
| Total Current Projects                    | \$4,913,426         |
| <b>Total Expenses</b>                     | <b>\$7,044,633</b>  |
| <b>EBITDA</b>                             |                     |
| Projects Under Contract                   |                     |
| Capella Residences - Las Vegas            | (\$16,017)          |
| Escondido                                 | 2,085,922           |
| Highgrange                                | (45,355)            |
| Hill Country Harbor                       | 2,933,629           |
| Kukui'ula                                 | 1,457,592           |
| Makena Bay Club                           | 3,782,484           |
| Ocean Club Residences & Marina            | 2,475,986           |
| Residences at the Ritz-Carlton - Dallas   | 1,671,858           |
| Tower Residences at Ritz-Carlton - Dallas | 642,313             |
| Silverleaf                                | 2,171,212           |
| Total Current Projects                    | \$17,159,623        |
| <b>Total EBITDA</b>                       | <b>\$15,028,416</b> |
| <b>Corp Expenses as % of Net Revenue</b>  |                     |
| Projects Under Contract                   |                     |
| Capella Residences - Las Vegas            | 1.2%                |
| Escondido                                 | 10.7%               |
| Highgrange                                | 2.7%                |
| Hill Country Harbor                       | 19.2%               |
| Kukui'ula                                 | 11.0%               |
| Makena Bay Club                           | 20.8%               |
| Ocean Club Residences & Marina            | 11.4%               |
| Residences at the Ritz-Carlton - Dallas   | 7.6%                |
| Tower Residences at Ritz-Carlton - Dallas | 4.9%                |
| Silverleaf                                | 10.6%               |
| Total Current Projects                    | 100.0%              |
| <b>Net Revenue Contribution (%)</b>       |                     |
| Projects Under Contract                   |                     |
| Capella Residences - Las Vegas            | 1.2%                |
| Escondido                                 | 10.7%               |
| Highgrange                                | 2.7%                |
| Hill Country Harbor                       | 19.2%               |
| Kukui'ula                                 | 11.0%               |
| Makena Bay Club                           | 20.8%               |
| Ocean Club Residences & Marina            | 11.4%               |
| Residences at the Ritz-Carlton - Dallas   | 7.6%                |
| Tower Residences at Ritz-Carlton - Dallas | 4.9%                |
| Silverleaf                                | 10.6%               |
| Total Current Projects                    | 100.0%              |

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**TRADITIONS MANAGEMENT, LLC**

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**SUBJECT:** PROJECTS UNDER NEGOTIATION**DATE:** DECEMBER 13, 2006

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The following is a summary of projects that are currently under negotiation:

**FORBES TRINCHERA RANCH**

The Developer of this property will be Kip Forbes of the Forbes publishing family. This has long been their family's ranch for hunting, fishing and entertaining. It is one of the largest tracts in the United States that remains privately held. The project consists of approximately 171,000 acres located in Colorado which Developer intends to develop as a year round outdoorsmen club known as *Trinchera Ranch*. The primary use of this property has been as a big game hunting preserve, however, the multitude of natural amenities on the ranch is impressive. Developer currently intends to initially offer (20) Founder ownership interests at the Property. Included with each Ownership Interest will be unlimited access to the services and amenities offered at the Property, including the Lodge, the Guest Ranch house, at least (2) cabins, on-site transportation, trails for hiking, biking, ATViing and snowmobiling, swimming, hunting and fishing, camping facilities, and other amenities that are in keeping with the proposed lifestyle at the Project. In addition, owners will have the opportunity to build a personal Lodge Residence.

We are in the process of finalizing on a draft of the Sales Agreement. It is currently anticipated that:

- The term will be through June, 2008
- Gross sales revenue is expected to be approximately \$70 million – with gross commissions paid at the rate of 6.00% (or \$4.2 million).
- A 1.00% bonus will be earned if (16) Ownership Interests are closed by 12/31/2007.

**ROSE ISLAND**

The project consists of approximately 230 acres located on Rose Island in the Bahamas which Developer intends to develop as a residential community known as *The Ritz-Carlton, Rose Island*. As currently envisioned, the Project will include (136) waterfront estate homes averaging approximately 3,800 square feet, (50) marina island townhomes ranging in size from 1,800 square feet to 2,300 square feet and (29) marina island villas averaging approximately 2,800 square feet located on the marina island, and (49) whole-ownership, fee simple yacht island condominiums averaging approximately 1,000 square feet, (15) whole-ownership, fee simple marina village condominiums averaging approximately 1,500 square feet, (28) iron shore villas averaging approximately 2,800 square feet and (120) condominiums. Included with the Real Estate Product will be access to luxury hotel services and amenities such as concierge, valet parking and parking spaces, room service, hotel restaurant, a beach club, destination spa and fitness facility, retail village, marina, Ritz-Kids Activity Center & Daycare, dive shop, water sports/dive shop, nature preserve and other amenities consistent with the proposed lifestyle at the Project.

We have forwarded a draft Sales Agreement to Developer for review. It is currently anticipated that:

- The term will be (3) years from the date of the first fully executed Binding Contract of Sale.
- Gross sales revenue is TBD; gross commissions will be paid at the rate of 3.50%.
- A 1.00% bonus will be earned – with the bonus benchmark TBD.

#### **BAHIA MAROMA**

The project is located on the Riviera Maya between Cancun and Playa del Carmen, Mexico. Developer intends to develop as a residential community known as **Bahia Maroma Resort**. As currently envisioned, the Project will consist of (21) luxury beach front residences averaging approximately 3,700 square feet, (8) beachfront villas averaging approximately 3,700 square feet, (27) whole-ownership two and three-bedroom condominiums ranging in size from approximately 2,700 square feet to 3,700 square feet, (45) cottages averaging approximately 3,700 square feet, and (16) fractional condominiums. The Project may also include other real estate product. Included with each Unit will be access to Capella hotel services and amenities such as concierge, valet parking and parking spaces, room service, hotel restaurants, hotel spa/fitness center, outdoor pools and whirlpools, tennis courts and other amenities consistent with the proposed lifestyle at the Project. Capella is the operator of luxury 5-Star boutique hotels consisting of less than 100 suites and representing the pinnacle in personal service. Capella is the brain child of Horst Schultze, the man singularly responsible for the creation of the Ritz-Carlton brand. In addition, each purchaser will have the ability to apply for membership in the Bahia Maroma Club consisting of an 18-hole Championship golf course with a clubhouse with [TBD] memberships to be offered.

We are working on with the Developer to finalize the Services Agreement. It is currently anticipated that:

- The term will be (3) years from the date of the first fully executed Binding Contract of Sale.
- Gross sales revenue is TBD; gross commissions will be paid at the rate of 3.50%.
- A 1.00% bonus will be earned if 70% of the initial offering is sold within (18) months after the first Binding Contract of Sale.

#### **THE PRESERVE AT SANTA LUCIA**

The project consists of approximately 20,000 acres located a short distance inland from Carmel by the Sea with (300) homesites. Approximately (250) homesites have been sold at an average price of \$1.75 million. Our assignment will be to help the developer sell the remaining inventory for an average price of between \$1.5 and \$2.0 million. This community has been rated by Travel and Leisure Golf as the #1 golf community in America. The golf course was designed by Tom Fazio and is set in what may be the most pristine land in the country. The amenities, in addition to golf, include Pool, equestrian, fishing, hiking, fitness, and spa.

We are working on with the Developer to finalize the Services Agreement. It is currently anticipated that:

- The term will be through December, 2007.
- Gross sales revenue is TBD; gross commissions will be paid at the rate of between 3.00% and 6.00% (depending on the product).
- A 1.00% bonus will be earned if (20) homesites are closed by December 31, 2007.

**THE CAPELLA HOTEL AND COMMUNITY**

The proposed project is envisioned to be a destination resort property on Providenciales in the Turks and Caicos. Capella is the operator of luxury 5-Star boutique hotels consisting of less than 100 suites and representing the pinnacle in personal service. Capella is the brain child of Horst Schultze, the man singularly responsible for the creation of the Ritz Carlton Brand. The community will consist of all the amenities associated with the Capella brand as well as the natural amenities associated with over a mile of pristine beach and hundreds of acres of beautiful ocean habitat.

We are in initial conversations with the developer. It is currently anticipated that a traditional Services Agreement will be signed.

- The term is anticipated to be from 9/15/2007 through 12/31/ 2009 or 2010.
- Gross sales revenue is TBD; gross commissions will be paid at the rate of between 5.00% and 8.00% (depending on the product).
- A 1.00% bonus will be earned if (20) homesites are closed by December 31, 2007.